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DOCKET NO. 10.1022

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of :
ALBERTO GENESI : Group Art Unit: 2638
Serial No.: 10/072,615 : Examiner : Emmanuel Bayard
Filed: February 5, 2002 :
For: A SYSTEM AND METHOD FOR
DATA TRANSMISSION IN
DMT-BASED DSL MODEMS

RESPONSE

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In response to the Official Action dated July 28, 2005, applicant responds
as follows:

REQUEST FOR RECONSIDERATION

Claims 1 through 8 are currently pending in this application. Claims 1 through 8 stand rejected under 35 U.S.C. §102(b) as being anticipated by van Nee (US Patent No. 6,175,550). Applicant respectfully traverses the rejection of claims 1 through 8.

"Anticipation...requires that the *identical invention that is claimed* was previously known to others and thus is not new...." *Continental Can v. Monsanto*, 948 F.2d 1264, 1267 (Fed. Cir. 1991)(emphasis added). *A single reference must have each and every element of the claim.* See *Advanced Display Systems Inc. v. Kent State University*, 54 USPQ 2d 1673, 1679 (Fed. Cir. 2000)("Accordingly, invalidity by anticipation requires that the four corners of a *single, prior art document* describe every element of the claimed invention, expressly or inherently, such that *a person of ordinary skill in the art could practice the invention without undue experimentation.*")(emphasis added); See also, *PPG Industries, Inc. v. Guardian Industries Corp.*, 37 USPQ 2d 1618, 1624 (Fed. Cir. 1996)("To anticipate a claim, a reference must disclose every element of the challenged claim and *enable one skilled in the art to make the anticipating subject matter.*")(emphasis added)

When reviewed under the proper standard, the rejection based upon van Nee cannot be sustained. van Nee does not either directly nor inherently anticipate the claimed invention. Claim 1 requires "determining, at said transmitter, whether or not a spectrum of said IFT output is periodic with a clock of a *predefined standard-size IFT;*" and "communicating, *before data transfer begins*, a result of

said determination from said transmitter to said receiver.." . (emphasis added) van Nee does not disclose these steps. van Nee does not disclose determining whether or not a spectrum of said IFT output is periodic with a clock of a predefined standard-size IFT. van Nee does not discuss using a standard-size IFT. Furthermore, van Nee does not disclose communicating, before data transfer begins, a result of a determining step.

As discussed at column 7, lines 45-54, in van Nee, the dynamic control circuitry 15 (of the transmitter) and 47 (of the receive) vary the data rate based upon the various listed factors. van Nee does not disclose this occurring prior to data transmission as required by claims 1 and 8 or during handshaking as required by claim 5..

As to claim 2, nowhere does van Nee disclose doubling a size of the FT.

Claims 3, 4, 6 and 7 also define patentable subject matter for the reasons set forth with respect to claim 1.

In the present invention, *before* data is exchanged between modems, the receiver is made aware of how the transmitter is modulating the data. The receiver adapts to the transmitter if necessary, thereby reducing data rate loss and improving the overall operation of data transmission.

Neither van Nee, nor any other prior art of record anticipate or render obvious the claims as presented. It is respectfully requested that the rejection of the claims be withdrawn.

Applicants have made a diligent and bona fide effort to answer each and every ground for rejection or objection to the specification including the claims and to place the application in condition for allowance. Reconsideration and further examination is respectfully requested, and for the foregoing reasons, Applicant respectfully submits that this application is in condition to be passed to issue and such action is earnestly solicited.


It is believed that no additional fees are presently due. However, should that determination be incorrect, the undersigned hereby authorizes the Patent Office officials to debit Deposit Account No. 50-0562 to satisfy any and all fees which may be due.

Should the Examiner wish to discuss this matter further, please contact the undersigned at the below listed number.

Dated: October 24, 2005

Respectfully submitted,

Merek, Blackmon & Voorhees, LLC
673 S. Washington St.
Alexandria, Virginia 22314
Tel. 703-684-5633
Fax. 703-684-5637



David H. Voorhees
Reg. No. 33,325
Attorney for Applicant